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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,115	06/14/2002	Henricus Wilhelmus Theodorus Janssen	EF377397961US	1559

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Baker Botts
30 Rockefeller Plaza
New York, NY 10112

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,115

Applicant(s)

JANSSEN, HENRICUS
WILHELMUS THEODORUS

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-12,16-18 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-12,16-18 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 9-12, 16-18, and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 994,816 to Cahill in view of U.S. Patent No. 5,276,996 to Lee.

Regarding Claims 1, 10, 12 and 16-18, Cahill teaches a method of manufacturing a plant support manufactured having an at least partially open wall, the box-shaped element (Cahill Fig. 1) being at least partially covered with a preferably substantially biodegradable covering material (Cahill Fig. 2 and page 1 line 25), the covering material being provided in such a manner that it covers the partially open wall at least partially, such that the wall becomes soil-proof, while roots of a plant, growing in the pot during use, can grow at least partially through the covering material (Cahill page 1 line 80-84) and the wall to the outside of the plant support, characterized in that as covering material a material is manufactured from biodegradable material.

Cahill is silent on a substantially vertically extending guide element mounted on the box-shaped element. However, Lee teaches a substantially vertically extending guide element mounted in combination on a box-shaped element (Lee Fig. 6). It would

have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention for the watering and fertilizing features taught by Lee (Lee abstract).

Regarding Claim 2, Cahill as modified teaches the box-shaped element is at least substantially manufactured from material having a mesh-shaped structure (Cahill Fig. 1).

Regarding Claim 3, Cahill as modified discloses the box-shaped element is substantially manufactured from wire material (Cahill page 1 line 55).

Regarding Claim 4, Cahill as modified teaches the covering material is manufactured from at least natural fibers (Cahill page 1 lines 25, 59, and 22) and binding agent (Cahill page 2 line 20).

Regarding Claim 7, Cahill as modified teaches the covering material is woven into the wall of the box-shaped element (Cahill page 1 line 59).

Regarding Claim 11, Cahill as modified teaches the box-shaped element is dug in the ground, such that the roots of each plant grow outside through the plant support, into the ground, and provide anchoring and nutrition (Cahill page 1 lines 85-90 and 100-105).

Regarding Claim 21, Cahill as modified teaches the mesh shaped guide element (Lee Fig. 6), but is silent on the box-shaped element and the guide element are manufactured in one piece. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of a known manufacturing method to meet certain design cost parameters.

Regarding Claim 22, Cahill as modified teaches the plant support is demountable (Lee Fig. 6).

Regarding Claim 23, Cahill as modified teaches the guide element is detachably mountable adjacent the bottom of the box-shaped element (Cahill Fig. 6).

Regarding Claim 24, Cahill as modified is silent on the number of box-shaped elements plurality and the positional arrangement. However, it would have been obvious to one of ordinary skill in the art at the time of the invention since the modification is merely the duplication of a known element for a multiple effect to perform the same intended function for application to industrial practices and does not present a patentably distinct limitation. In addition, merely arranging the elements in a particular configuration is merely an obvious modification to merely efficiently utilize available growing space.

Regarding Claim 25, Cahill as modified inherently teaches a plurality of plants (Lee Fig. 6).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 994,816 to Cahill as applied to claim 1 above, and further in view of U.S. Patent No. 3,958,365 to Proctor.

Regarding Claim 5, Cahill as modified teaches moss, but is silent on the covering material being substantially built up from coco fibers and a latex binding agent. However, Proctor teaches a basket liner for moisture retention mad of coco fibers and latex binder (Proctor Col. 2 line 33 and line 40). It would have been obvious to one of

ordinary skill in the art to modify the teachings for the reasons taught by Proctor of moss substitution (Proctor Col. 1 lines 17-25).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 994,816 to Cahill as applied to claim 1 above, and further in view of U.S. Patent No. 3,818,633 to Sable.

Regarding Claim 6, Cahill as modified teaches a sheet covering (Cahill page 1 line 25, but is silent on the covering material has a sheet-shaped element which is folded into a covering of the box-shaped element. However, Sable teaches a sheet covering for a moss covered box-shaped element (Sable Fig. 1 #10). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention for means of controlled watering in a hanging configuration as taught by Sable (Sable Col. 1 line 5-10).

Response to Arguments

Applicant's arguments with respect to claims 1-7, 9-12, 16-18, and 21-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV


PETER M. POON
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9/24/03